

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON BUSINESS AND LABOR**

**Call to Order:** By **CHAIRMAN JOE MCKENNEY**, on March 26, 2003 at 8:00 A.M., in Room 172 Capitol.

#### **ROLL CALL**

**Members Present:**

Rep. Joe McKenney, Chairman (R)  
Rep. Jim Keane, Vice Chairman (D)  
Rep. Donald Steinbeisser, Vice Chairman (R)  
Rep. Bob Bergren (D)  
Rep. Rod Bitney (R)  
Rep. Sylvia Bookout-Reinicke (R)  
Rep. Nancy Fritz (D)  
Rep. Dave Gallik (D)  
Rep. Kathleen Galvin-Halcro (D)  
Rep. Ray Hawk (R)  
Rep. Bob Lawson (R)  
Rep. Rick Maedje (R)  
Rep. Gary Matthews (D)  
Rep. Scott Mendenhall (R)  
Rep. Penny Morgan (R)  
Rep. Allen Rome (R)  
Rep. Sandy Weiss (D)  
Rep. Bill Wilson (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Bart Campbell, Legislative Branch  
Alberta Strachan, Committee Secretary

**Please Note.** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing & Date Posted: SB 46 (3/14/03); SB 415 (3/14/03);  
SB 270 (3/14/03); SB 344 (3/14/03)

Executive Action: SB 315 Be Concurred In; SB 306 Be  
Concurred In; SB 344 Be Concurred  
In As Amended; SB 275 Be Concurred  
In As Amended.

**HEARING ON SB 415**

**Sponsor:** SEN. FRED THOMAS, SD 31, Stevensville

**Opening Statement by Sponsor:**

**SEN. THOMAS** said this bill revises the qualifications for a golf course beer and wine license. It changes the requirements for the number of holes, course length and proximity to a municipality.

***{Tape: 1; Side: A; Approx. Time Counter: 106 - 129}***

**Proponents' Testimony:**

**Greg Barkus, representing himself**, said the length of time the license would be used is for five months per year, dawn until dusk. His golf course is Northern Pines and it falls outside the one-mile range. An amendment has been considered to change the range requirements. As the bill currently stands, if a non-profit organization would come in across the road, they are less than three miles in range. They could have a beer and wine license but Northern Pines could not. It is not fair.

***{Tape: 1; Side: A; Approx. Time Counter: 106 - 129}***

**Tom Clary, General Manager, Northern Pines Golf Course**, said they agree with Mr. Barkus's testimony. They would like to offer their guests, like every other golf course in the Flathead Valley, an opportunity to have a beverage after playing golf.

***{Tape: 1; Side: A; Approx. Time Counter: 129 - 138}***

**Mark Staples, Montana Tavern Association**, said they had tried working with the licensing system to not totally disenfranchise the investments and still accommodate everyone. The municipality does not have the funding to run a golf course. The citizens then get together and form a nonprofit organization and establish a golf course. This is for a profit developed investors golf course. The homesites situated around some golf courses are more than they would need to pay for a license.

***{Tape: 1; Side: A; Approx. Time Counter: 138 - 220}***

**Mark Baker, Attorney at Law, Northern Pines Golf Course**, said this issue began a couple of years ago. A golf course that is outside the city limits could not get a beer and wine license

that was within the one-mile limitation. If the golf course is within five miles out of the city limits. They can purchase a license. He urged support with the amendment.

**{Tape: 1; Side: A; Approx. Time Counter: 220 - 253}**

**Opponents' Testimony:**

**Carl Heishman, Manager Partner, Emerald Greens Golf Course, Great Falls,** said he has been fighting to get an equal playing field for golf courses for five years. The colleges and universities always get a free license and it is difficult for independent people to compete with that. He said their premises is an executive course, 18 holes, 3,000 yards, but they did not qualify for a license. A law must be passed to allow 18 holes and at least 3,000 yards. If the legislature is here to make laws and make it equitable for industry, there should not be special-interest laws. They need to make the playing field equal.

**{Tape: 1; Side: A; Approx. Time Counter: 253 - 328}**

**Kim Poole, resident of Superior,** said he had a small par 3 executive golf course. He also said he concurs with the testimony of Mr. Heishman.

**{Tape: 1; Side: A; Approx. Time Counter: 328 - 362}**

**Informational Testimony:**

**Neil Peterson, Department of Revenue,** said he was available for questions.

**Questions from Committee Members and Responses:**

**REP. BOOKOUT-REINICKE** asked **SEN. THOMAS** if the sponsor wanted to limit the restrictions more and not offend the taverns. **SEN. THOMAS** said he did not think the tavern owners would object.

**{Tape: 1; Side: A; Approx. Time Counter: 362 - 412}**

**REP. MORGAN** asked Mr. Heishman if the State would allow a license be given out if the club was only allowed to distribute beer and wine after sunset. **Mr. Heishman** said he did not know the answer to that question.

**{Tape: 1; Side: A; Approx. Time Counter: 412 - 459}**

**REP. LAWSON** asked Mr. Peterson what a license would cost. **Mr. Peterson** said it would be \$500.00.

**{Tape: 1; Side: A; Approx. Time Counter: 459 - 500}**

**CHAIRMAN MCKENNEY** asked Mr. Heishman if his course would qualify with the new legislation. **Mr. Heishman** said it would.

**{Tape: 1; Side: B; Approx. Time Counter: 1 - 84}**

**Closing by Sponsor:**

The Sponsor closed.

**{Tape: 1; Side: B; Approx. Time Counter: 84 - 111}**

**HEARING ON SB 46**

**Sponsor:** **SEN. KELLY GEBHARDT, SD 4, Roundup**

**Opening Statement by Sponsor:**

**SEN GEBHARDT** said this bill removes the requirement that a county must enter into a contract for certain large purchases or construction contracts.

**{Tape: 1; Side: B; Approx. Time Counter: 128 - 148}**

**Proponents' Testimony:**

**Gordon Morris, Director, Montana Association of Counties,** presented written testimony from Vernon Petersen, Chairman, Board of Commissioners, Fergus County and a copy of the bill with the Association's rendition of amendments attached.

**EXHIBIT (buh64a01)**

**EXHIBIT (buh64a02)**

**{Tape: 1; Side: B; Approx. Time Counter: 148 - 202}**

**Jim Reno, County Commissioner, Yellowstone County,** said there was a multitude of jobs and equipment that are bid out yearly by Yellowstone County. County government is very interconnected. Problems should be assessed and corrected among the counties.

**{Tape: 1; Side: B; Approx. Time Counter: 202 - 246}**

**John Ausland, County Commissioner, Yellowstone County,** said this is a taxpayer issue which is all about accountability. Local governments have provided road service for years. Legislators of the past have recognized the need for public safety. They exempted local governments from taxes, from FET taxes and fuel taxes. Local governments get huge breaks from the equipment vendors. Material is purchased less expensively because it is purchased from the contractors. Contractors in county governments do different things and they both do them well.

**{Tape: 1; Side: B; Approx. Time Counter: 246 - 265}**

**Erik Griffin, Director of Public Works, Lewis & Clark County and President, Montana Association of County Road Supervisors,** said current law requires that counties must enter into contracts and must bid on most activities over \$50,000. This bill restores the law back to how it was, with the exception of the bid dollar amounts, which allows county commissioners to decide if and when activity should be bid. This assures that the highest and most cost effective level of service is provided to the people in their counties.

**{Tape: 1; Side: B; Approx. Time Counter: 265 - 281}**

**J.D. Lynch, Montana Public Employees Association,** said this bill is a matter of trust. The same people that elect legislators elect your local county commissioners.

**{Tape: 1; Side: B; Approx. Time Counter: 281 - 294}**

**Alec Hanson, Montana League of Cities & Towns,** said this bill is vitally important to the counties and the consolidated governments, and without this bill they would be in a real management bind.

**{Tape: 1; Side: B; Approx. Time Counter: 294 - 325}**

**Jack Knorr, Superintendent, Stillwater County Road/Bridge Department,** provided written testimony.

**EXHIBIT (buh64a03)**

**{Tape: 1; Side: B; Approx. Time Counter: 325 - 344}**

**Judy Jacobson, Chief Executive, Butte Silverbow,** said they support this bill. The bulk of their work is contracted out. She also said they had bid out \$2 million on the water lines and will do the same again this year.

**{Tape: 1; Side: B; Approx. Time Counter: 344 - 300}**

**Jim Johnston, Director of Public Works, Butte Silverbow,** said they had contracted out about \$99 million of work. There are also documents going out for bid in the amount of \$2 million worth of sewer, water and paving projects next year. Most of their work is contracted out and they would like to have the right to continue to do the work they do at a reasonable price for the taxpayers and ratepayers.

**{Tape: 1; Side: B; Approx. Time Counter: 360 - 368}**

**Bob Gilbert, Rosebud County and the City of Colstrip,** said they support the bill.

**{Tape: 1; Side: B; Approx. Time Counter: 368 - 370}**

**Bill Kennedy, County Commissioner, Yellowstone County Commission, and the First Vice President, Montana Association of Counties,** said they support this bill.

**{Tape: 1; Side: B; Approx. Time Counter: 370 - 389}**

**Bob Pavlovich, International Brotherhood of Electrical Workers,** said they support this bill.

**{Tape: 1; Side: B; Approx. Time Counter: 389 - 393}**

**Don Judge, Teamsters Local 190,** said they want to get back to where the law was which existed and operated for close to 70 years. They support this bill without the proposed amendments.

**{Tape: 1; Side: B; Approx. Time Counter: 393 - 450}**

**Troy Blunt, County Commissioner, Phillips County Commissioners,** provided written testimony.

**EXHIBIT (buh64a04)**

**{Tape: 1; Side: B; Approx. Time Counter: 450 - 460}**

**Mark Rehbein, County Commissioner, Richland County Commissioners,** provided copies of pictures of road construction. He also indicated he supports this bill.

**{Tape: 1; Side: B; Approx. Time Counter: 460 - 466}**

**Don Rieger, County Commissioner, Fallon County Commissioners,** said he supports this bill.

**{Tape: 1; Side: B; Approx. Time Counter: 466 - 473}**

**Carol Brooker, County Commissioner, Sanders County Commissioner,** said she supports this bill.

**{Tape: 1; Side: B; Approx. Time Counter: 473 - 492}**

**Gary MacDonald, County Commissioner, Roosevelt County Commissioner,** said he supports the bill without amendments.

**{Tape: 1; Side: B; Approx. Time Counter: 492 - 500}**

**Mona Jamison, Gallatin County,** said they support the bill.

**{Tape: 1; Side: B; Approx. Time Counter: 500 - 508}**

**Chuck Notbaum, County Commissioner, Jefferson County Commissioners,** said he supports this bill.

**{Tape: 1; Side: B; Approx. Time Counter: 508 - 510}**

**Anita Varone, Chairman, Lewis & Clark County Commissioners,** said, "Me too."

**{Tape: 2; Side: A; Approx. Time Counter: 1 - 4}**

**Willie Duffield, Assistant Executive Director, Montana Association of Oil and Gas and Coal Counties,** said he supports this bill. The opponents of this bill don't have the support of all of the taxpayers in their counties. If they did, they could approach the County Commissioners office and take care of the concerns they have. They would rather come to the Legislature and have them micro-manage local government.

**{Tape: 2; Side: A; Approx. Time Counter: 4 - 12}**

**Lee Provance, Road/Bridge Superintendent, Gallatin County,** said he supports this bill.

**{Tape: 2; Side: A; Approx. Time Counter: 12 - 20}**

**Opponents' Testimony:**

**Paul Thompson, Engineer, Gillman Construction,** said their concern is with new construction projects. The majority of the counties don't engage in new construction projects over \$50,000 and most do not want to. Some counties own specialized equipment like hot plants, crushers and milling machines. The counties like to say they can do this work cheaper than contractors but construction companies disagree. Even though counties have several built-in advantages in costs, they do not pay equipment taxes, fuel taxes and do not buy business licenses or bonds for the work they perform. County employees are not required to comply with the David Bacon wages but contractors are required to do so. Even with all of these advantages, counties and local governments cannot do the work cheaper than contractors.

**{Tape: 2; Side: A; Approx. Time Counter: 20 - 90}**

**Oliver Hale, JTL Group, Kalispell,** said he agrees with Mr. Thompson's testimony. They were able to bid on work that took place in Missoula County. He sees the counties as being in direct competition with private industry. He is opposed in seeing the county in that line of work.

**{Tape: 2; Side: A; Approx. Time Counter: 90 - 118}**

**Jan Livesay, Elected President, Montana Contractors Association,** provided testimony from John Blannock.

**{Tape: 2; Side: A; Approx. Time Counter: 118 - 156}**

**Cary Hegreberg, Executive Director, Montana Contractors Association,** said he opposed this bill and submitted a copy of History and Final Status, 1999.

**EXHIBIT (buh64a05)**

**{Tape: 2; Side: A; Approx. Time Counter: 156 - 286}**

**Bob Kober, General Manager, Empire Sand & Gravel,** said this bill is not a good program. Attempts were made to initiate a

compromise bill. There are at least three counties in the state that defy the standard contractual process and abuse the system who try to sell work that should be performed by private industry for maximum cost efficiency for the taxpayer. The majority of the counties are reasonable in their approach to public/private work relationships.

**{Tape: 2; Side: A; Approx. Time Counter: 286 - 318}**

**Tim Crennen, General Manager, JTL Construction,** said he opposes the bill.

**{Tape: 2; Side: A; Approx. Time Counter: 318 - 321}**

**Carl Schweitzer, American Subcontractor Association,** said they opposes the bill. He also commented on the snow removal in West Yellowstone and the fact that no one is there to do this work. If they were to offer that work to a private contractor, they would find contractors interested in doing that job.

**{Tape: 2; Side: A; Approx. Time Counter: 321 - 338}**

**Riley Johnson, National Federation of Independent Contractors,** said this bill was a matter of government competing with private enterprise.

**{Tape: 2; Side: A; Approx. Time Counter: 338 - 346}**

**Webb Brown, Montana Chamber of Commerce,** said they oppose the bill, and he also stated they were not questioning the ability of local governments to do the work. As an example, the parking lot of his place of employment was plowed twice by a private contractor and the designated snow route which is maintained by local government had not been plowed as of Monday morning.

**{Tape: 2; Side: A; Approx. Time Counter: 346 - 356}**

**Kerry Gray, Highway Specialities, Great Falls,** said they oppose the bill.

**{Tape: 2; Side: A; Approx. Time Counter: 356 - 360}**

**Bob Livesay, Montana Lines, Great Falls,** said they oppose the bill.

**{Tape: 2; Side: A; Approx. Time Counter: 360 - 370}**

**Lee Zwemke, JTL Group,** said they opposes the bill.

**{Tape: 2; Side: A; Approx. Time Counter: 370 - 374}**

**Greg Miller, Holsem,** said they opposes the bill.

**{Tape: 2; Side: A; Approx. Time Counter: 374 - 376}**

**Informational Testimony:** None



**Questions from Committee Members and Responses:**

**REP. GALLIK** asked the Sponsor if the county could also bid on projects. **SEN. GEBHART** said, "Yes."

**{Tape: 2; Side: A; Approx. Time Counter: 387 - 448}**

**REP. GALVIN-HALCRO** asked J.D. Lynch what had changed since 1999. **Mr. Lynch** said he had supported previous legislation but indicated, for the most part, he had opposed all of the bills regarding this matter.

**{Tape: 2; Side: A; Approx. Time Counter: 448 - 470}**

**REP. MENDENHALL** asked Mr. Johnson if he had a comparable chart regarding projects Butte Silverbow has done in-house. **Mr. Johnson** said he did not have a chart.

**{Tape: 2; Side: A; Approx. Time Counter: 470 - 507}**

**Closing by Sponsor:**

The Sponsor closed.

**{Tape: 2; Side: B; Approx. Time Counter: 51 - 99}**

**HEARING ON SB 270**

**Sponsor:** **SEN. DAN HARRINGTON, SD 19, Butte**

**Opening Statement by Sponsor:**

**SEN. HARRINGTON** said this bill revises the independent contractor exemption laws to impose a civil penalty and required repayment of unemployment contributions and workers' compensation premiums against an employer who falsely misrepresented an employee's status as an exempt independent contractor.

**{Tape: 2; Side: B; Approx. Time Counter: 106 - 125}**

**Proponents' Testimony:**

**J.D. Lynch, Montana State Building Trades,** said they support this idea of the people coming together to solve mutual problems.

**{Tape: 2; Side: B; Approx. Time Counter: 125 - 128}**

**Jason Miller, United Brotherhood of Carpenters,** said his job was talking with carpenters working in the field. More and more of these carpenters are identifying themselves as independent carpenters. These people identifying themselves as independent carpenters usually have no illusions about whether or not they are really in business. They are not. The process of coming

together and working towards some kind of solution that is agreeable with the industry is critical.

***{Tape: 2; Side: B; Approx. Time Counter: 128 - 139}***

**Byron Roberts, Montana Building Association**, said the way the system is set up, it provides significant liability protection to builders, homeowners, business owners and others.

***{Tape: 2; Side: B; Approx. Time Counter: 139 - 160}***

**Gene Fenderson, Montana Progressive Labor Caucus and Teamsters Local 190**, said they support this bill.

***{Tape: 2; Side: B; Approx. Time Counter: 160 - 206}***

**Riley Johnson, National Federation of Independent Business**, said they had been dealing with this issue for fifteen years. He said it was of great interest to him.

***{Tape: 2; Side: B; Approx. Time Counter: 206 - 218}***

**Carl Schwietzer, Montana Subcontractors Association**, said they support this bill.

***{Tape: 2; Side: B; Approx. Time Counter: 218 - 224}***

**Jacqueline Lenmark, American Insurance Association**, said they support this bill as amended.

***{Tape: 2; Side: B; Approx. Time Counter: 224 - 231}***

**Nancy Butler, Montana State Fund**, said independent contractor statutes are complex in their application and interpretation for insurance companies, employers, employees and independent contractors. They wish to study this area to see how it can be improved.

***{Tape: 2; Side: B; Approx. Time Counter: 231 - 233}***

**Bob Worthington, Montana Municipal Insurance Authority**, said they had a significant issue with the management of independent contractors.

***{Tape: 2; Side: B; Approx. Time Counter: 233 - 239}***

**Opponents' Testimony:** None

**Informational Testimony:**

**Jerry Keck, Department of Labor and Industry**, said he was available for questions from the Committee.

**Questions from Committee Members and Responses:** None

**Closing by Sponsor:**

The Sponsor closed and indicated REP. GALVIN-HALCRO will be carrying the bill on the floor.

***{Tape: 2; Side: B; Approx. Time Counter: 300 - 330}***

**EXECUTIVE ACTION ON SB 315**

**Motion/Vote:** REP. GALVIN-HALCRO moved that SB 315 BE CONCURRED IN. Motion carried 17-1 with REP. WILSON voting no.

REP. GOLIE will carry this bill on the House Floor.

**EXECUTIVE ACTION ON SB 306**

**Motion/Vote:** REP. BOOKOUT-REINICKE moved that SB 306 BE CONCURRED IN. Motion carried 18-0.

REP. GALVIN-HALCRO will carry this bill on the House Floor.

**HEARING ON SB 344**

**Sponsor:** REP. RICK LAIBLE, SD 30, Victor

**Opening Statement by Sponsor:**

REP. LAIBLE, said this bill reduces the minimum non-forfeiture amount to 1.5% a year interest from 3% a year interest with respect to certain annuity contracts providing for flexible considerations.

***{Tape: 3; Side: A; Approx. Time Counter: 1 - 24}***

**Proponents' Testimony:**

Jacqueline Lenmark, American Council of Life Insurers, supplied some proposed amendments.

**EXHIBIT** (buh64a06)

***{Tape: 3; Side: A; Approx. Time Counter: 24 - 96}***

Don Allen, Montana Association of Insurance Financial Advisors, said he supports this bill.

***{Tape: 3; Side: A; Approx. Time Counter: 96 - 116}***

Jill Gerdrun, Insurance Department, said they support this bill as amended. Because of their concern for the financial solvency

of the companies and the availability of their products in the market they will support the reduction to the 1.5% if the sunset provision is included.

***{Tape: 3; Side: A; Approx. Time Counter: 116 - 130}***

**Opponents' Testimony:** None

**Informational Testimony:** None

**Questions from Committee Members and Responses:**

**REP. MENDENHALL** asked SEN. LAIBLE his reason for not putting in the index rate instead of 1.5%. **SEN. LAIBLE** said the Association did not have the language for that index yet and this will give the Association two years to formulate the indexing formula, it can then be approved and put into the legislation.

***{Tape: 3; Side: A; Approx. Time Counter: 130 - 143}***

**Mr. Campbell** said if a termination date was put into the language, there will be two sections in the law. One of the sections is going to be in the law with the 3% figure. He then asked if they just wanted to pass this legislation and come back in two years and change the figure.

***{Tape: 3; Side: A; Approx. Time Counter: 143 - 187}***

**Closing by Sponsor:**

The Sponsor closed.

***{Tape: 3; Side: A; Approx. Time Counter: 187 - 200}***

**EXECUTIVE ACTION ON SB 344**

***{Tape: 3; Side: A; Approx. Time Counter: 200 - 500}***

**Motion:** REP. FRITZ moved that SB 344 BE CONCURRED IN.

**Motion/Vote:** REP. GALLIK moved that SB 344 BE AMENDED. Motion carried 18-0. (Exhibit 6)

**Motion/Vote:** REP. GALLIK moved that SB 344 BE CONCURRED IN AS AMENDED. Motion carried 18-0.

**EXECUTIVE ACTION ON SB 275**

**Motion:** REP. BITNEY moved that SB 275 BE CONCURRED IN.

Motion/Vote: REP. MORGAN moved that SB 275 BE AMENDED. Motion carried 18-0.

**EXHIBIT** (buh64a07)

Motion/Vote: REP. MORGAN moved that SB 275 BE CONCURRED IN AS AMENDED. Motion carried 14-4 with REPS. GALLIK, GALVIN-HALCRO, WILSON, KEANE voting no.

**ADJOURNMENT**

Adjournment: 10:45 A.M.

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REP. JOE MCKENNEY, Chairman

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ALBERTA STRACHAN, Secretary

JM/AS

**EXHIBIT** (buh64aad)